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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 3rd day of April 1998

BEFORE

THE HON'BLE Mr.JUSTICE V.K.SINGHAL

WRIT PETITION NO.24217/1991

Between;

M/s. Shankar Traders
Sanganakallu village
Bellary Taluk and Dist
Karnataka State
by its Partner Sri Basavaraj, major.

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..petitioner

(M/s. Patil & Associates for petitioner)

And:

1. The Additional Collector of
Excise,
Thakket Building,
Club Road, Belgaum.
2. Customs Excise and Gold
(Control) Appellate Tribunal,
South Regional Branch,
Madras. ..Respondents

(Sri Mukunda Menon, CGSC. for respondents)

Writ Petition is filed praying to to quash the
impugned order dated 26-7-1989 vide Annexure -B
and the order dated 4-7-1991 vide Annexure-C
respectively.

This writ petition coming on for hearing today,
the Court made the following:

order
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ORDER

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The petitioner has filed this writ petition challenging the order dated 26th July 1989 passed by the Addl. Collector, Central Excise. The writ petition was earlier dismissed on account of availability of alternative remedy. But by the order dated 14.7.1994 the matter was restored as it was pointed out that the C.E.G(Control) A.T., has no power to condone the delay in preferring the appeal.

2. I have heard the arguments of the learned Counsel for the parties on both sides. The order of C.E.G.(Control) A.T., dated 4th July 1991 has given a finding of fact that two units of the petitioner cannot be considered to be separate. It was also found that certain amount was suppressed by the petitioner ^{from} ~~through~~ Central Excise Department. The duty was upheld but the penalty was reduced to Rs.10,000/-. It is pointed out that against the said order, an application for reference was filed which was dismissed, but no action was taken against it.

3. The contention of the learned Counsel for the petitioner has been heard on merits. The order of the Chief Judicial Magistrate, Bellary, in C.C.No.325/1991

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dated 17-2-94 cannot effect the civil liability of the petitioner. A finding of fact has already been given by the C.E.G(Control) A.F. that the petitioner was having only one unit and not two. Sufficient reasons have been assigned for arriving to the conclusion. No interference is made out by the petitioner in this writ petition.

4. Accordingly, this writ petition is dismissed.

Sd/-
JUDGE

kvv/-